

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10539
Summary Calendar

RUSSELL MOTLEY,

Plaintiff-Appellant,

versus

S. K. STONE, Fort Worth Police Officer
(Badege #2914); AMY FINLEY, (EMT) Student,
John Peter Smith Hospital,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(4:98-CV-657-A)

December 17, 2001

Before HIGGINBOTHAM, WIENER, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Russell Motley ("Motley"), Texas prisoner # 828175, appeals the summary-judgment dismissal of his civil rights complaint filed pursuant to 42 U.S.C. § 1983. Motley alleges that his Fourth, Eighth, and Fourteenth Amendment rights were violated when the defendant, a Fort Worth police officer, used an "escort hold" on him during a medical procedure while Motley was being treated in a hospital emergency room following his arrest for driving while intoxicated.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The district court did not err in determining that the defendant was entitled to qualified immunity from Motley's claims. To the extent that Motley attempted to assert a violation of his Fourth Amendment right to be free from unreasonable searches, his claim fails because Motley did not refute Stone's evidence that he was not engaged in a search of Motley at the time a urine specimen was obtained at the hospital; indeed Motley has made no showing that his blood or urine was analyzed for alcohol or that such evidence was used in his prosecution. See Siegert v. Gilley, 500 U.S. 226, 231 (1991) (first inquiry in examining defense of qualified immunity is whether the plaintiff has alleged a violation of a clearly established constitutional right).

Motley's Eighth Amendment claim is properly analyzed as a Fourth Amendment excessive-force claim. See Graham v. Connor, 490 U.S. 386, 395 (1989). That claim also fails, because the injury sustained by Motley did not result directly and solely from Stone's use of an "escort hold" during catheterization but rather was caused by Motley himself when he removed the catheter. See Spann v. Rainey, 987 F.2d 1110, 1115 (5th Cir. 1993). Further, in light of the unrefuted evidence that Motley was combative with hospital personnel, Stone's use of the escort hold to protect hospital personnel was objectively reasonable. See id.

AFFIRMED.